



**International Bancshares
Corporation**

July 15, 2019

Via email: regs.comments@federalreserve.gov

Board of Governors of the Federal Reserve
Attn: Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System
20th Street Constitution Avenue NW
Washington, DC 20551

Re: Docket No. R-1662 and RIN 7100-AF-49; Board of Governors of the Federal Reserve ("Board"); Request for Comment on Proposed Rulemaking Regarding Controlling Influence Under the Bank Holding Company Act or Home Owners' Loan Act

Ladies and Gentlemen:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a multi-bank financial holding company headquartered in Laredo, Texas. IBC holds five state nonmember banks serving Texas and Oklahoma. With over \$12 billion in total consolidated assets, IBC is the largest Hispanic-owned financial holding company in the continental United States. IBC is a publicly-traded holding company.

This letter responds to the Board's request for comment relating to proposed changes to the Bank Holding Act ("BHA") and Home Owners' Loan Act ("HOLA"), which would provide more clarity for the type of conduct that qualifies as a "controlling influence." The request for comment acknowledges that the definition of "controlling influence" is ambiguous and it can be difficult for regulated institutions such as IBC to structure investments to avoid falling into the "controlling influence" prong of the BHA and HOLA. We agree and enthusiastically support changes that would afford more clarity for the definition of "controlling influence" and would expand the definition so that nominal participation or ownership in a second company would not qualify as a controlling influence. IBC's responses to the Board's request for comment are below.

I. Percentage Thresholds for Control (Questions 1 & 3)

We support the Board's proposal for specific percentage thresholds that invoke a presumption of control. The threshold percentages provide a bright line rule for control and will allow regulated institutions to structure transactions without the uncertainty of whether the transaction unknowingly falls into the definition of "controlling influence" under the BHA and HOLA.

In response to Question No. 1, IBC recommends that an investor be allowed to have director representation that is proportional to its voting percentage before triggering the presumption of control—rather than an inverse relationship between voting percentage and director representation. A proportional relationship presumption would be easy to measure and would eliminate any residual ambiguity when considering other subjective factors such as a director's ability to block major operational or policy decisions. Further, a proportional relationship is consistent with an absence of control because the director representation would not exceed the voting shares; thus, a majority stake that enables control is absent.

In response to Question No. 2, IBC recommends that the board chair presumption make a distinction between public and private companies. Public companies already face heightened corporate governance standards and arguably increased liability exposure. This heightened scrutiny and regulatory framework already further restrict a public company board chair from the private company context. Furthermore, when the board chair and CEO positions are bifurcated, it is the CEO who exercises day-to-day control over the company's operations and is the senior decision maker. While the board chair is the head of a company's board of directors, the chair is really acts as the senior representative of shareholders and is responsible for upholding their interests. The CEO effectively runs the company and is usually seen as the top person within the company. The board chair with the rest of the board may make the decision to overrule or hire or fire a CEO, but it would be extremely rare that a board chair could not take such action alone. The make-up of the board with truly independent directors should also be a factor taken into consideration by the Board.

In response to Question No. 3, IBC recommends that the chair of the committee presumption take into account the type of committee. IBC agrees with the Board that the scope of authority for a committee to exercise control may vary drastically depending on the committee and some committees may have little to no authority to make company decisions. Thus, creating an indicia of control based upon committee service is overly broad and would lead to a presumption of control where control is not present.

II. Business Relationships (Questions 4 -9)

In response to Question No. 4-9, IBC recommends that the Board take into consideration how easily the business relationship could be replaced. IBC agrees that the business relationship being on market or better than market terms is important, but regardless of the size of the relationship, the real issue is barriers to entry and reliance on the relationship. If the business relationship regardless of its size is one that is easily substitutable with other third party providers then the economics of the situation have little to do with the amount of control being alleged.

III. Senior Management Interlocks (Question 10)

The Board's proposal for senior management interlocks is still too ambiguous and broad. Whether an employee is considered senior management and has authority to participate in major policymaking functions is subjective and cannot be quantified. The Board's proposal, in effect, would require regulated institutions to view any management employee as representative capable of making major policymaking functions. In our experience, management status (senior or

otherwise) does not involve policymaking authority; rather, such authority is reserved for specific senior executives. IBC therefore strongly encourages that the senior management proposal be limited to the senior executive level, perhaps even equated to Section 16 filing status or named executive officers as set forth in Regulation S-K under the Securities Exchange Act of 1934, as amended.

IV. Proxy Solicitation (Question 12)

IBC agrees with the Board's proposal not to have a presumption of control where a company holds 10 percent or more of a class of voting securities of a second company and solicits proxies from the second company on any issue. Solicitation of proxies on any issue would result in a presumption of control where the issue voted on has no substantial impact on policies and decision-making in the second company. Further, such a presumption would restrict shareholders from exercising their rights to vote on certain issues so as to avoid exercising a "controlling influence" over the second company.

V. Threats to Dispose (Question 13)

IBC concurs with the Board that a presumption of control arising from a threat to dispose large blocks of voting or nonvoting securities will restrict an investor from exiting a relationship where the investor is unhappy with or disagrees with the business decisions of the second company. In that situation, the threat to dispose arises from a legitimate business concern and is not an attempt at control. For that reason, IBC encourages the Board not to adopt a presumption of control where a company threatens to dispose of its voting shares where the threat to dispose is based upon an identifiable business concern.

VI. Rebuttable Presumption of Non-control (Questions 31-33)

IBC encourages the Board to increase the threshold for a presumption of non-control to avoid a finding of control where none actually exists.

In response to Question 30, IBC proposes that the Board raise the threshold for a presumption of non-control to 20 percent. 20 percent is far less than a majority stake and, in our experience, is not enough to give rise to meaningful control over policy and decision making.

In response to Question 31, IBC agrees that the Board should not presume control where neither a statutory standard nor a regulatory presumption of control applies. This presumption of non-control provides a definite benchmark of non-control, which allows regulated institutions to structure transactions more easily. Without this benchmark, the lack of transparency plaguing the "controlling influence" prong would remain.

In response to Questions 32 and 33, IBC supports an exception to the presumption of control where there is larger stakeholder or group of unaffiliated stakeholders that control 50 percent or more of each class of voting securities in the second company. In this

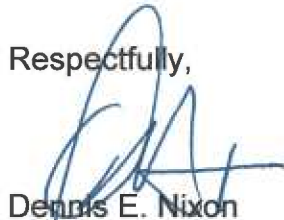
situations, the larger stakeholder or group of unaffiliated stakeholders maintain control and the risk of the company exercising control is nominal.

Finally, although no specific questions were asked in this regard, IBC recommends that the Board consider allowing bank holding companies to hold merchant banking investments for longer periods of time. Many investments, particularly large scale development projects take more time and bank holding companies are being forced out of their investments too early. Also, IBC recommends expanding the list of permissible restrictive covenants under Section 225.171(d)(2). For example, the ability to prevent the second company from entering into material agreements based upon the cost or expense of such agreements for example being in excess of a certain percentage of revenue or assets of the company. Finally, IBC believes the provisions of Section 225.171(e) may provide a solution that is too late. IBC recommends allowing greater flexibility to holding companies and its management to participate in the second company before a significant loss is eminent, for example greater board representation, in order to better protect the holding company's investment without triggering "control" restrictions that might otherwise penalize the holding company.

In conclusion, IBC urges the Board to promote investments and eliminate unnecessary ambiguity by amending the BHA and HOLA to provide a more concrete definition of "controlling influence" and increase the presumptions of non-control as discussed above.

Thank you for this opportunity to share our views.

Respectfully,

A handwritten signature in blue ink, appearing to read "DENNIS E. NIXON", is written over a horizontal line.

Dennis E. Nixon
President
International Bancshares Corporation